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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

11 UNITED STATES OF AMERICA,) No. CR 05-00125 PJH
12 Plaintiff,)
13 v.) STIPULATED ORDER RE RELEASE
14 KENNETH KELLY,)
15 Defendant.)
16

17 The Court issues this order temporarily releasing Kenneth Kelly on his own recognizance for
18 the following reasons:

19 1. Kelly is charged in a two-count indictment with possession and receipt of child
20 pornography. Previously, he was released, but after he failed to comply with the terms of
21 supervision by (among other things) possessing new child pornography, the magistrate court
22 remanded him into custody. He now is in the custody of the United States Marshals Service.

23 2. According to the Marshals Service, Kelly apparently suffered a heart attack. He is in the
24 intensive care unit at Valley Memorial Hospital in Pleasanton, California, and he is unconscious
25 and on a respirator. His medical condition is not likely to improve significantly in the immediate
26 future. Because Kelly is in custody, the Marshals Service has posted deputy United States
27 marshals at the hospital around the clock to maintain his custody status. The Marshals Service
28 has requested that Kelly be temporarily released so that the deputies may be relieved of the

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responsibility and the unnecessary cost of watching an unconscious patient. According to the Marshals Service, and based on his medical condition, Kelly currently does not pose a danger to the community or a flight risk.

3. According to defense counsel, Kelly's sister Ann Kelly has a power of attorney, but because he is in custody, she cannot obtain any information about his medical condition. According to the Marshals Service, once Kelly is released from custody, the hospital should provide Ms. Kelly with medical information. Defense counsel has agreed to keep the Court, the United States, and Pretrial Services informed about Kelly's medical condition on an ongoing basis and to provide a copy of this order to Ann Kelly.

4. The parties have agreed that a further bail hearing should be set before Magistrate Judge Maria-Elena James on Thursday, January 17, 2008, at 10 a.m., and they have confirmed that Judge James and Pretrial Services are available that day. At the hearing, the parties will address whether Kelly should continue on release, and if so, whether further conditions (such as having his sister serve as custodian) should be imposed. Finally, the parties can address how to inform Kelly of the terms of his release if he regains consciousness.

Accordingly, the Court temporarily releases Kelly on his own recognizance. Because Kelly is unconscious and cannot be informed of any conditions of release, the Court sets a further status hearing before Judge James on January 17, 2008, at 10 a.m. At that hearing, the Court can address whether Kelly should continue on release and what conditions should apply.

IT IS SO ORDERED.

DATED: January 9, 2008

PHYLLIS J. HAMILTON
United States District Judge

STIPULATED:

DATED: _____

_____/s
ELIZABETH FALK
Attorney for Kenneth Kelly

DATED: _____

_____/s
LAUREL BEELER]
Assistant United States Attorney

